

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1646

---

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

PAN AMERICAN WORLD AIRWAYS, INC. and  
TRANS WORLD AIRLINES, INC.,  
*Petitioners,*

—against—

CIVIL AERONAUTICS BOARD,  
*Respondent.*

ON PETITION FOR REVIEW OF ORDER OF THE  
CIVIL AERONAUTICS BOARD

---

**APPENDIX**

---

CARL S. ROWE  
HAROLD L. WARNER, JR.  
*Attorneys for Petitioners*  
30 Rockefeller Plaza  
New York, New York 10020

JERRY W. RYAN  
1100 Connecticut Avenue, N.W.  
Washington, D. C. 20036

EDMUND E. HARVEY  
1150 17th Street, N.W.  
Washington, D. C. 20036

*Of Counsel*

---



PAGINATION AS IN ORIGINAL COPY

## APPENDIX

### Table of Contents

	Appendix Page	Record (Tr.) Page
Chronological list of relevant docket entries .....	1a	
The order to be reviewed .....	2a	66
Supplement to Appendix .....	28a	



## **Chronological List of Relevant Docket Entries**

**CAB Docket No. 25854**

<b>Item</b>	<b>Tr. Page No.</b>
SPDR-33, Notice of Proposed Rule-making authorizing amendments to Travel Group Charter Rules, dated September 4, 1973 .....	1
Comments filed by:	
a. London Flugdienst G.m.b.H., dated October 10, 1973 .....	17
b. Swiss Air Transport Co. Ltd., dated October 10, 1973 .....	20
c. British Caledonian Airways Ltd., dated October 9, 1973 .....	21
d. British Midland Airways, Ltd., dated October 9, 1973 .....	24
e. Member carriers of National Air Carrier Association, dated October 10, 1973 .....	26
f. Certain trunkline carriers, dated October 10, 1973 .....	40
g. British Overseas Airways Corp., dated October 10, 1973 .....	59
SPR-74, amending Part 372a of the Board's Economic Regulations, adopted March 15, 1974 .....	66

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

Special Regulations  
Amendment No. 5 to Part 372a  
Effective: April 22, 1974  
Adopted: March 15, 1974

PART 372a - TRAVEL GROUP CHARTERS

AUTHORIZING AMENDMENTS

By SPDR-33 <sup>1/</sup> the Board issued a Notice of Proposed Rule Making to amend Part 372a to permit certificated air carriers and foreign air carriers to perform foreign-originating Travel Group Charters (TGC's) in accordance with the laws of the country of origin, rather than with the requirements presently prescribed for TGC's in Part 372a. Pursuant to the Notice comments have been filed by certain Member Carriers of the National Air Carrier Association (NACA), <sup>2/</sup> certain Trunkline Carriers, <sup>3/</sup> British Caledonian Airways Limited (BCAL), British Midland Airways, Ltd., British Overseas Airways Corporation (BOAC), Condor Flugdienst G.m.b.H. (Condor) and Swiss Air Transport Company, Ltd. (Swissair). The NACA carriers and Swissair support the proposed rules; BCAL, British

1/ September 4, 1973, 38 F.R. 24664 (Docket 25854).

2/ Overseas National Airways, Inc., Saturn Airways, Inc., World Airways, Inc. and Trans International Airlines, Inc.

3/ American Airlines, Inc., Braniff Airways, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.



Midland, BOAC and Condor object to certain features of the proposal; and the Trunkline Carriers contend that the proposed rules would be unlawful insofar as applied to U. S. supplemental carriers.

Upon consideration, the Board has determined to adopt the rules in the form proposed. The tentative findings and conclusions set forth in SPDR-33 are incorporated and made final, except as modified or amplified herein.<sup>3a/</sup> Before addressing the various arguments which the comments have raised against the proposed rules we shall set forth the background of this proceeding.

A. Background of this proceeding.

On September 27, 1972, the Board adopted Part 372a governing the operation of TGC's. Essentially the regulation permits groups of 40 or more persons having no "prior affinity" to hire all or part of an aircraft for round-trip transportation, provided the group is formed at least ninety days in advance of the flight departure date, and each participant then pays at least a twenty-five percent non-refundable deposit. The actual cost of the trip must be borne by the participants on a pro rata basis. Part 372a authorizes both U. S. and foreign direct air carriers to provide air transportation in connection with both foreign-originating and U. S.-originating TGC's, subject to compliance with the various conditions and restrictions set forth therein.

<sup>3a/</sup> Some of the minimum requirements for foreign-originating TGC's which we proposed in SPDR-33, and are adopting herein (§372a.60(b)), reflect parallel restrictions in our existing TGC rule. We are issuing, contemporaneously herewith, a Notice of Proposed Rule Making (SPDR-35) proposing, inter alia, some relaxation of these restrictions, (e.g., to reduce the pre-departure filing deadline from 90 days to 60 days). Accordingly, it should be noted that if we finally adopt these proposals, we would appropriately revise the rules adopted herein so as to reflect such relaxation in the parallel requirements for foreign-originating TGC's.

As noted in SPDR-33, the Board's adoption of Part 372a was largely motivated by its dissatisfaction with existing affinity charter rules, in that the "prior affinity" concept is inherently discriminatory and the rules directed to maintaining this concept had proven extremely difficult to enforce. These concerns about traditional affinity rules had been shared for some time by the regulatory authorities of many other countries, and some were considering adoption of novel "non-affinity" rules differing in some respects from the TGC rule which the Board had proposed. During the pendency of rule making proceedings culminating in the adoption of Part 372a, several participants had argued for the adoption of special rules with respect to foreign-originating TGC's, so as to permit such charters to be operated in conformance with the originating country's rules governing TGC's (or their counterparts, however designated), so long as the foreign country's rules were substantially similar to those prescribed by Part 372a. However, at the time the Board adopted Part 372a, no foreign country had as yet promulgated comparable charter rules, and the Board therefore considered it premature to attempt then to prescribe standards for determining whether another country's future rules would be substantially similar to ours. The Board did, however, express agreement in principle with the merits of the proposed "law of the country of origin" approach and indicated its willingness to deal with the matter later, in light of future developments in the international air transportation community, and to take appropriate implementing action -- by amending our rules, granting waivers, or otherwise -- giving due consideration to the interests of the public and the various competing classes of carriers.



Shortly after the Board's adoption of its TGC rules the United Kingdom announced its intention to adopt an Advance Booking Charter (ABC) rule, embodying a comparable concept; following that, representatives of the governments of the United States, Canada, and the 20 member states of the European Civil Aviation Conference (ECAC), met in Ottawa, Canada, and in October 1972 issued a joint Declaration of Agreed Principles for North Atlantic Charter Flights (Ottawa Principles). The Department of State, in announcing adoption of the Ottawa Principles, stated:

"It is expected that the Declaration, while it is not a treaty or an Executive Agreement, will provide a generally agreed framework which will permit all North Atlantic states to establish similar charter rules with respect to the new non-affinity class of air charters that will facilitate and regularize their operation on North Atlantic air routes."<sup>4/</sup>

In addition, a contemporaneous letter from the Deputy Assistant Secretary of State for Transportation and Telecommunications to the Chairman of the Canadian International Transport Policy Commission and the President of ECAC stated:

"Adherence to the Declaration signifies our intention to permit the operation to and from the United States of foreign-originating charters marketed under national rules consistent with the Declaration but differing from our own pro-rata regulations. To this end, we are prepared to undertake discussions with other interrelated authorities, at an appropriate early date, to arrive at [a] mutually agreeable regime for particular bilateral flows and to ensure fully reciprocal treatment for U.S.-originating TGC flights."<sup>5/</sup> (Emphasis added).

<sup>4/</sup> Department of State Press Release No. 296, December 1, 1972.

<sup>5/</sup> Ibid.



Bilateral discussions concerning TGC/ABC services have since been held between the United States and other North Atlantic countries, and bilateral Memoranda of Understanding have been signed to date by the U.S. and the United Kingdom, the Netherlands, the Federal Republic of Germany, France, and Ireland.<sup>6/</sup> Each Memorandum of Understanding provides that each Party will accept as "charterworthy" traffic "originated in the territory of the other Party" and organized and operated "pursuant to the advance charter (TGC or ABC) rules of that Party." The Memoranda of Understanding with France, the Federal Republic of Germany and the United Kingdom further provide that the United States undertakes that its regulatory authorities will "[b]egin and conclude, as soon as practicable, rule making procedures to implement acceptance of the advance booking charter (ABC) rules" of the other Party.

In SPDR-33 the Board referred to the above-described developments which had occurred since Part 372a was adopted. In light of these circumstances, the Board stated that it believed that it would now be appropriate to propose amending Part 372a so as to authorize foreign air carriers holding section 402 permits, as well as all certificated carriers,

<sup>6/</sup> Department of State Press Release 97, April 2, 1973. (United Kingdom); No. 113, April 16, 1973 (Federal Republic); No. 134, May 7, 1973 (France); No. 233, July 2, 1973 (Ireland); No. 255, July 18, 1973 (the Netherlands). The U.S. also has a bilateral Memorandum of Understanding with Belgium, signed in October 1972, respecting charter services. This agreement covers all types of charters, including TGC's, but does not deal specifically with the question of Belgium-originating TGC/ABC flights originating under the Belgian rules. An interim intergovernmental agreement concerning TGC/ABC services is also in effect with Austria pending formal conclusion of a Memorandum of Understanding. A nonscheduled air service agreement with Yugoslavia which includes TGC and ABC acceptance is also in effect (Department of State Press Release 352, September 27, 1973).

to perform foreign-originated TGC's or ABC's organized in compliance with the rules of the country of origin, so long as: (1) those foreign rules are substantially similar to ours, and (2) there is in effect, between the country of origin and the United States, a formal agreement with respect to the charterworthiness of such operations. The Board also tentatively concluded that, in order for a foreign country's rules to be considered substantially similar to our own, they must embody, at a minimum, the following restrictions and conditions:

- (1) The participants in each TGC/ABC group must travel together on both the outbound and inbound portions of the trip.
- (2) Each TGC/ABC contract must cover at least forty seats.
- (3) The list of actual participants (i.e., persons contractually bound to pay for a specifically identified flight) in each TGC/ABC group must be filed with appropriate regulatory authorities at least ninety days in advance of flight departures.
- (4) If there is to be a list of "standbys" (i.e., eligible substitutes for participants) for a TGC/ABC, and if the cost of the TGC/ABC is prorated among participants, then the number of such standbys shall not exceed three times the number of participants; but if the cost to individual TGC/ABC participants is not prorated, then the number of standbys shall not be greater than the number of seats contracted for.
- (5) No person shall be added to a standby list within ninety days prior to flight departure.



(6) If the cost of the TGC/ABC is prorated among participants, then standbys may be substituted for participants at any time prior to flight departure; but if the cost to individual TGC/ABC participants is not prorated, then standbys may not be substituted for participants within thirty days prior to flight departure.

(7) If the cost of the TGC/ABC is prorated among participants, then no more than twenty percent of the participants in any TGC/ABC groups may be persons whose names were included on the standby list for that TGC/ABC flight; but if the cost to individual TGC/ABC participants is not prorated, then no more than fifteen percent of the number of seats contracted for may be sold to persons whose names were on the standby list relating to such flight.

(8) A TGC/ABC must be "round trip" (i.e., including both a departure and return flight).

(9) If the cost of the TGC/ABC is prorated among participants, then a TGC/ABC must be for a minimum duration of at least seven days in the case of North American charters, and a minimum duration of at least ten days in the case of all other charters; but if the cost to individual TGC/ABC participants is not prorated, then during the period of April 1 to October 31, the TGC/ABC must provide for a minimum duration of at least fourteen days, and during the period of November 1 to March 31, the minimum duration must be at least ten days: Provided, however, That the minimum duration of a non-prorated North American TGC/ABC need not be greater than seven days.

(10) If the cost of the TGC/ABC is prorated among participants, then commingling of TGC/ABC groups with other categories of charter traffic is permitted, but if the cost to individual TGC/ABC participants is not prorated, then no commingling of TGC/ABC groups with other categories of charter traffic shall be permitted.

(11) The direct air carrier shall maintain a list of the passengers actually carried on each TGC/ABC flight.

B. Trunkline Carriers' arguments against proposed rules.

The Trunkline Carriers contend that the proposed rules would abolish the restrictions "heretofore found necessary to distinguished TGC's from individually ticketed services" and would therefore be illegal insofar as they would apply to supplemental carriers. We do not agree. Although certain of the particular restrictions applicable to U.S.-originated TGC's will not be required of foreign-originated TGC/ABC's, other restrictions will apply to the latter which are not required of the former. Thus, insofar as TGC/ABC charter services are required to be distinguished from individually ticketed services, we find that the set of minimum restrictions prescribed by the within rules will preserve the required distinction, even if the particular restrictions comprising the set vary somewhat from those comprising our TGC set of restrictions.

In their argument the Trunklines have chosen not to consider whether the total impact of the restrictions the Board is imposing on foreign-originating TGC/ABC's maintain the necessary distinction between charters



and individually ticketed services. Instead, they seize upon particular restrictions which, while imposed on outbound TGC's, will not be imposed on inbound TGC/ABC's, and contend that such restrictions are indispensable to preserving the distinction. The TGC restrictions which will not apply to foreign-originating TGC/ABC's are as follows: (1) the TGC/ABC traveler is not required to be a party to the charter contract itself, incurring liability for the pro rata share of the charter cost and running the risk that his cost may increase, depending on the load factor ultimately achieved; (2) members of TGC/ABC's are not required to have paid a nonrefundable deposit of their charter price before the time for filing the list of tour members has elapsed, nor are any later deposits required to be paid at specified times or to be nonrefundable, and thus the participant does not necessarily risk any forfeiture should he desire to change his plans; (3) there is not necessarily a risk of flight cancellation up to 45 days prior to scheduled departure because of defaults by fellow charter participants, nor necessarily any financial risk of price increases because of such defaults.<sup>6a/</sup>

Yet, in affirming the TGC rule, the Court of Appeals did not hold, in Saturn Airways, Inc. v. C.A.B.<sup>7/</sup> that each of the restrictions of TGC's is indispensable to maintain the distinction between TGC's and

<sup>6a/</sup> Of course, organizers of foreign-originating TGC/ABC's will undoubtedly, in their own economic interest, include in participants' contracts provisions for required times of payment, partial or complete forfeiture in the event of default or change of plans, cancellation of the charter under certain circumstances, and so forth. The foreign ABC rules do not in general forbid such contract provisions; they simply do not mandate them as does our TGC rule.

<sup>7/</sup> 483 F. 2d 1284 (D.C. Cir. 1973).

individually ticketed services, nor has the Board ever so held.<sup>8/</sup> To the contrary, in adopting the TGC rule, the Board separately listed a number of restrictive features of TGC's,<sup>9/</sup> each of which distinguished TGC's from individually ticketed services, and concluded that "in view of the aforescribed restrictions and limitations on performance of travel group charters, none of which are applicable to individually ticketed service" (emphasis added), TGC's are unquestionably distinguishable<sup>10/</sup> from individually ticketed services.

Furthermore, it is well-settled by now that, so long as the distinction between the two types of services is maintained, the formulation of particular requirements to achieve this end is for the Board to determine. "Charter" is not defined in the Act, nor does it have a fixed meaning, and so long as the distinction is not breached it is for the Board to evolve

<sup>8/</sup> Contrary to the Trunklines' contention, the Board did not represent in its brief to the court, in Saturn Airways, Inc. v. C.A.B., that it held such a view. What the Board's brief said, with respect to the entire set of its restrictions, was that ". . . the Board's TGC rules establish an elaborate regulatory scheme designed to ensure that TGC's are significantly different from the conventional service available to the individual traveler. On their face, we submit they demonstrate a substantial and vital difference between TGC travel and conventional travel" (p. 37). That we were urging the court to judge the total effect of the restrictions, rather than the indispensability of any one or several of them, was made even more clearly when we said, with reference to the requirement of exclusive marketing by charter organizers: "This element is one of the group of restrictive requirements which serve to distinguish TGC service from individually-ticketed service. While any one of these requirements may or may not be essential for this purpose, they are to be taken together in forming the distinction between the two types of service." (Emphasis added.) (p. 85).

<sup>9/</sup> (1) The pro rata requirement; (2) risk of flight cancellations; (3) formation of the group well in advance of departure with a substantial nonrefundable deposit; (4) requirement that all TGC participants move together as a group on both legs of the trip; and (5) the minimum stay requirement.

<sup>10/</sup> SPR-61, p.10 as issued and p.3 in reprinted issue!



reasonable definitions. <sup>11/</sup> "Congress has given the Board a singularly clean slate upon which to write its conception of charter services." <sup>12/</sup>

We are satisfied that to the extent that it is legally necessary to maintain a distinction between charter and individually ticketed services, each of the following restrictions and conditions we are specifying with respect to foreign-originated ABC's is not normally an incident of individually ticketed service, and the cumulative effect of the set of restrictions adequately precludes the use of TGC/ABC charters as a guise for individually ticketed service:

(a) The participants in each TGC/ABC group must travel together on both outbound and inbound portions of the trip. No such restriction is ordinarily required of individually ticketed travelers.

(b) At least ninety days in advance of flight departures, TGC/ABC participants are contractually bound to pay for a specifically identified flight. This is not a characteristic of individually ticketed travel.

(c) A TGC/ABC must be "round trip," including both a departure and return flight. An individually ticketed traveler normally has a choice between purchasing a one-way or round-trip ticket.

<sup>11/</sup> American Airlines, Inc. v. C.A.B., 121 U.S. App. D.C. 120, 348 F. 2d 349, 354 (1965); American Airlines, Inc. v. C.A.B., 125 U.S. App. D.C. 6, 365 F. 2d 939, 949 (1966).

<sup>12/</sup> Trans International Airlines v. C.A.B., 139 U.S. App. D.C. 174, 432 F. 2d 607, 609 (1970).

(d) There is a minimum-stay requirement for TGC/ABC participants,<sup>13/</sup> a requirement not generally imposed on individually ticketed travelers.

The Trunkline Carriers seem particularly concerned with the fact that, unlike outbound TGC's, there is no requirement that inbound TGC/ABC participants must bear a pro rata share of the total cost of the charter. This factor has never been considered a sine qua non of charters. Even though the presence of this factor in a charter rule goes a long way toward indicating that the statutory distinction is being preserved, the absence of a pro rata feature hardly establishes the converse. Indeed, except for outbound TGC's and prior affinity charters, none of the other types of charters which air carriers and foreign air carriers are authorized to perform<sup>14/</sup> require all participants to share equally the total charter cost or to make up the shares of defaulting participants.

Moreover, the within rules impose several more stringent restrictions on those foreign-originated TGC/ABC's from countries whose rules do not include a pro rata requirement. For example, in such cases, the minimum-stay limitation for charters outside of North America will be 14 days during the peak season (instead of 10 days); the permissible number of standbys

<sup>13/</sup> For North American charters, the minimum-stay requirement is 7 days, the same as for outbound TGC's. For other than North American charters, the minimum-stay requirement is 10 days, the same as for outbound TGC's except for peak season nonprorated TGC/ABC's in which the minimum-stay requirement is 14 days, thus exceeding any minimum requirement for outbound TGC's.

<sup>14/</sup> §§207.11, 208.6, 212.8 and 214.7.



cannot exceed the number of seats contracted for (instead of three times the number of participants); standbys cannot be substituted for participants within 30 days of departure (instead of at any time prior to departure); the number of passengers whose names were on the standby list cannot exceed 15 percent of the number of seats contracted for (instead of 20 percent of the participants); and the TGC/ABC, if it is a split charter, cannot be combined on the same aircraft with other categories of split charters. The effect of these rules, imposing additional restrictions on foreign ABC charters which do not contain a pro rata requirement than are imposed on those operated under rules which do contain a pro rata requirement, is to assure that, on an overall basis, the different sets of restrictions applicable to either situation will be comparably stringent.

Finally, while no other country operates within precisely the same statutory framework as the United States, all of the other countries which joined in subscribing to the Ottawa Principles share a common interest in preserving the distinction between group and individually ticketed air service. Typically, each of these countries has its own national-flag scheduled carrier (in many cases government-owned) whose interests its government at all times strives to advance and protect. Where these countries also have charter-only carriers (usually privately owned), the governments limit such carriers to a subordinate or supplementary role as a matter of long-established policy even if not as a matter of explicit statutory requirement; and the governments of countries not having their own charter-only carriers similarly limit the authority they grant the charter-only carriers of

other countries, including the U.S. supplemental carriers.<sup>14a/</sup> These governments, like our own, have heretofore largely relied on the "prior affinity" concept as a means of limiting the role of the charter-only carriers, but like us they have in recent years become increasingly disillusioned with this concept, and a number have announced a firm intention of doing away with prior affinity charters in the near future. The Ottawa Principles represent an international consensus as to the most appropriate range of substitutes for the prior affinity concept as a means of preserving the distinction between scheduled individually ticketed and nonscheduled group air travel which all countries consider vital. While the Board has continued to view a pro rata requirement as a desirable component of the new charter form designed to replace affinity charters, most other governments have preferred to rely instead on other types of restrictions to achieve the same purpose. Thus, in asking us to conclude that sets of restrictions which comport with the Ottawa Principles and our proposed rule for foreign-originating charters nevertheless fail to preserve the essential distinction between individually ticketed and supplemental air transportation, the Trunkline Carriers are asking us to conclude that a considerable number of foreign governments, including many of the leading powers in the international aviation community, either have completely mistaken the problem or have abandoned their long-held policies of preserving the foregoing distinction. We cannot subscribe to any such conclusion.

We therefore conclude that nothing submitted by the Trunkline Carriers causes us to withdraw or modify our tentative conclusion in SPDR-33, which we now make final, that the cumulative effect of the various restrictions on

<sup>14a/</sup> Frequently, indeed, they have been more restrictive towards U.S. supplementals than our statutory framework has compelled this Board to be.



foreign-originating TGC/ABC's will "ensure that charter travel [does] not become a guise for individually ticketed services."<sup>15/</sup>

C. Other objections to proposed rules.

1. BCAL notes that proposed 8372a.60(b)(1) requires that the "participants in each TGC/ABC group must travel together on both the outbound and inbound portions of the trip." BCAL states that such a requirement is not imposed by the United Kingdom Civil Aviation Authority (C.A.A.) regulations and asks the Board to eliminate "the single incompatibility" between the Board's criteria and the C.A.A. rules. Similarly, BOAC contends that the proposed rules should accept as charterworthy, without the necessity of ad hoc waivers from the Board's rules, foreign-originated ABC's organized and operated pursuant to ABC rules of a foreign country when there is in effect an agreement with that country to recognize the charterworthiness of such operations.<sup>16/</sup> BOAC adds: "That is the regulation which the United States has specifically undertaken by international agreement to implement, and it is the only regulation which the Board may lawfully adopt in this area consistent with the requirements of section 1102 of the Act."<sup>17/</sup>

Section 1102 requires the Board to perform its duties under the Act consistently with any international agreements.<sup>18/</sup> However, there is nothing in that section which dispenses with the requirement of section 402(a) of the Act that no foreign air carrier shall engage in foreign air transporta-

<sup>15/</sup> Saturn Airways, Inc. v. C.A.B., supra, at 1293.

<sup>16/</sup> British Midland makes a somewhat similar argument.

<sup>17/</sup> BOAC also appears to assume that the Board is completely free to authorize foreign air carriers to engage in individually ticketed service. As pointed out hereinafter, we do not accept the validity of this assumption since, insofar as a foreign air carrier's permit limits it to performing "charters", we are bound to give meaning to that term.

<sup>18/</sup> Section 1102 provides, in part: "In exercising and performing [its] powers and duties under this Act, the Board \* \* \* shall do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries \* \* \*. 49 U.S.C. 1502.

tion unless there is in force a permit issued by the Board authorizing such carrier so to engage.<sup>19/</sup> Thus, for example, where a permit is issued to a foreign air carrier under section 402(b) authorizing it to engage solely in "charter" services, it is clear to us that no international agreement can confer additional rights on such a carrier as to permit it to engage in other than charter services in violation of its permit.

Accordingly, we consider it our duty under the Act to impose restrictions and conditions on foreign-originated TGC/ABC's to insure that such operations are not in violation of the charter authority which carriers have been granted by the Board. Nevertheless, in light of the bilateral agreements, the instant rule provides blanket authority for foreign-originated TGC's in line with the Ottawa Principles, which establish "a generally agreed framework which will permit all North Atlantic states to establish substantially similar rules."<sup>20/</sup> This rule should generally enable TGC/ABC's to be flown from all countries with which this government has signed agreements, pursuant to both their ABC rules and our rules. We have, however, taken account of the fact that the rules of a particular foreign signatory may embody variations which do not authorize operations impermissible under the carriers'

<sup>19/</sup> Cf. Trans-Canada A.L., Toronto-Buffalo-New York Route, 2 C.A.B. 616, 618 (1941); Trans-Canada A. L., Air Carrier Permit, 5C.A.B. 529, 530 (1945); Trans-Canada A.L., Air Carrier Permits, 5C.A.B. 1085, 1086 (1946)..

<sup>20/</sup> P. 4, supra.



authority. In such case, authority to operate charters under the foreign rules could be obtained by waiver, pursuant to §372a.3.<sup>21/</sup>

2. Finally, Condor requests the elimination of §372a.60(b)(10), which reads:

"If the cost of the TGC/ABC is prorated among participants, then commingling of TGC/ABC groups with other categories of charter traffic is permitted, but if the cost to individual TGC/ABC participants is not prorated, then no commingling of TGC/ABC groups with other categories of charter traffic shall be permitted."

Condor states that this restriction on the commingling of non-prorated TGC/ABC's with any other type of charter on the same aircraft is not supported by any apparent logic and, in addition, is contrary to the letter and spirit of the Memorandum of Understanding between the Federal Republic of Germany and the United States.

<sup>21/</sup> See SPDR-33, p. 9.

We reject this argument. As explained above,<sup>22/</sup> we think it necessary and desirable to impose different restrictions on non-prorated TGC/ABC's than on those which are prorated, so that the cumulative effect of the different sets of restrictions will be comparably stringent. We therefore believe it reasonable to extend to TGC/ABC's which are prorated the same commingling privileges which are enjoyed by our own TGC's, while withholding this privilege from TGC/ABC's which are not prorated.

In addition, we see nothing in §372a.60(b)(10) which is contrary to the letter or spirit of the Memorandum of Understanding between the United States and the Federal Republic of Germany. Condor states that the provision on which it relies<sup>23/</sup> contemplates commingling of ABC charters with groups organized in accordance with other regulations.

We believe that the provision in the Memorandum of Understanding upon which Condor relies is essentially an enforcement tool, to ensure that commingling is conducted in accordance with the regulations of either party, but does not purport to create a substantive right to commingle. Moreover, and more fundamentally, contrary to Condor's implicit assumption, we read the ABC rules of the Federal Republic of Germany as explicitly

<sup>22/</sup> See pp. 12-14, supra.

<sup>23/</sup> Paragraph I.B.3, provides that each Party: "Undertakes that its regulatory authorities will transmit, on request, to the regulatory authorities of the other party, passenger lists and other appropriate documents to facilitate the conduct of spot checks of flights, especially if on such flights there is commingling of ABC/TGC groups organized in accordance with other regulations."



prohibiting the commingling of ABC groups with other types of charter traffic,<sup>24/</sup> so that the restriction against which Condor complains is prohibited by the law of the country of origin, and not only by our §372a.60(b)(10).

Condor's request to eliminate this provision from our rules is therefore denied.<sup>25/</sup>

In consideration of the foregoing, the Board hereby amends Part 372a of its Special Regulations (14 CFR Part 372a) effective April 22, 1974, as follows:

1. Amend the Table of Contents by adding a new Subpart F, the Table as amended to read in part as follows:

\* \* \* \* \*

#### SUBPART E - REPORTING REQUIREMENTS

Sec.

372a.50 Reporting requirements.

#### SUBPART F - FOREIGN-ORIGINATING TRAVEL GROUP CHARTERS

372a.60 Foreign-originating travel group charters.

\* \* \* \* \*

2. Amend the definitions of "travel group charter" and "travel group charter organizer" in §372a.2 to read as follows:

24/ Paragraph 3.4 provides: "The joint use of one aeroplane by several ABC groups (split charters) is permitted. The combined transportation of ABC groups and groups, the participants of which do not fulfill the ABC requirements, is not permitted."

25/ We are also making final the various technical amendments which we proposed in SPDR-33, as discussed therein at p. 9. None of the comments addressed themselves to these proposals.

§372a.2 Definitions.

As used in this part, unless the context otherwise requires--

\* \* \* \* \*

"Travel group charter" means a round-trip charter to be performed by one or more direct air carriers which is arranged and sponsored by a charter organizer for a travel group and which meets the requirements set forth in §§372a.10 or 372a.60, whichever is applicable.

"Travel group charter organizer" means (1) any citizen of the United States, as defined in section 101(13) of the Act (other than a direct air carrier), who is authorized hereunder to engaged in the formation of travel groups in accordance with the provisions of this part; or (2) a foreign charter organizer.

3. Amend §372a.22 by adding, as a new paragraph (e), matter deleted hereinabove from §372a.2, the section, as amended, to read as follows:

§372a.22 Operating authorization of charter organizer.

\* \* \* \* \*

(d) On and after May 30, 1973, \* \* \*

(e) With respect to the charter contract, such charter organizer acts solely as agent for, and holds all moneys received from any source in connection therewith as agent for, the members of the travel group.

4. Amend §372a.31 by inserting, following paragraph (a) a new paragraph (a-1), and by revising paragraph (b), the entire section, as amended, to read as follows:



26./

§372a.31 Record retention.

(a) Every charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise its jurisdiction) conducting a travel group charter pursuant to this part shall retain for 2 years after completion of the charter or series of charters true copies of the following documents at its principal or general office in the United States (or, if it is a foreign charter organizer, then at its principal or general office):

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant;

(2) All statements, invoices, bills, and receipts from suppliers or furnishers of goods and services in connection with the travel group charter or series of charters.

(a-1) Every charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise its jurisdiction) conducting a travel group charter pursuant to Subpart F of this part shall retain for 2 years after completion of the charter at its principal or general office in the United States true copies of all documents which it is required by the applicable rules of the originating country to file with the regulatory authorities of that country or to maintain in its own files for any specified period.

26/ Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both. Title 18, U.S.C. §101.

(b) Every such charter organizer shall make the documents required to be retained by the provisions of the foregoing paragraphs (a) or (a-1), as the case may be, available upon request by an authorized representative of the Board and shall permit such representative to make such notes and copies thereof as he deems appropriate.

5. Amend §372a.40 to read as follows:

§372a.40 Charter not to be performed unless in compliance with part.

A direct air carrier shall not perform air transportation in connection with a travel group charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with (or, if it is a foreign-originated charter to which Subpart F applies, that all provisions of the rules of the country of origin have been complied with), and that the charter organizer's authority under this part has not been suspended by the Board (or, if it is a foreign-originated charter to which Subpart F applies, that the charter organizer's authority has not been suspended by the regulatory authorities of the country of origin): Provided, however, That except with respect to foreign-originated charters operated pursuant to Subpart F of this part, where a travel group is organized by a foreign charter organizer over whom the Board has declined to exercise its jurisdiction pursuant to §372a.20a, no direct air carrier may perform air transportation in connection with such travel group charter unless the charter is formed and implemented in accordance with the general conditions and limitations set forth in Subpart B of this part and the charter organizer performs all the acts and duties which this



part requires to be performed by charter organizers within the Board's jurisdiction, other than the provisions set forth in §§372a.22(b)(4)(iii), 372a.25 and 372a.31.

6. Amend Part 372a by adding a new Subpart F to read as follows:

SUBPART F - FOREIGN-ORIGINATING TRAVEL GROUP CHARTERS

§372a.60 Foreign-originating travel group charters.

(a) Notwithstanding the general conditions and limitations set forth in Subpart B of this part or the conditions set forth in §§372a.22, 372a.25, 372a.27 through 372a.30, 372a.31(a)(1) of Subpart C of this part, or the prohibitions set forth in §372a.41 and 372a.42 of Subpart D of this part, or the reporting requirements set forth in Subpart E of this part, direct air carriers and charter organizers (other than a foreign charter organizer over whom the Board has declined to exercise its jurisdiction) are authorized to operate and organize foreign-originating travel group or advance-booking charters (referred to herein as TGC/ABC) in compliance with the applicable rules of the originating country, so long as (1) such foreign rules conform to paragraph (b) of this section, and (2) there is in effect a formal agreement between the originating country and the United States with respect to the charterworthiness of such operations.

(b) The following are the restrictions and conditions to which foreign rules must conform in order for direct air carriers and charter organizers to operate and organize foreign-originating TGC/ABC charters pursuant to paragraph (a) above:

(1) The participants in each TGC/ABC group must travel together on both the outbound and inbound portions of the trip.

(2) Each TGC/ABC contract must cover at least forty (40) seats.

(3) The list of actual participants (i.e., persons contractually bound to pay for a specifically identified flight) in each TGC/ABC group must be filed with appropriate regulatory authorities at least ninety (90) days in advance of flight departures.

(4) If there is to be a list of "standbys" (i.e., eligible substitutes for participants) for a TGC/ABC, and if the cost of the TGC/ABC is prorated among participants, then the number of such standbys shall not exceed three times the number of participants; but if the cost to individual TGC/ABC participants is not prorated, then the number of standbys shall not be greater than the number of seats contracted for.

(5) No person shall be added to a standby list within ninety (90) days prior to flight departure.

(6) If the cost of the TGC/ABC is prorated among participants, then standbys may be substituted for participants at any time prior to flight departure; but if the cost to individual TGC/ABC participants is not prorated, then standbys may not be substituted for participants within thirty (30) days prior to flight departure.

(7) If the cost of the TGC/ABC is prorated among participants, then no more than twenty percent of the participants in any TGC/ABC group may be persons whose names were included on the standby list for that TGC/ABC flight; but if the cost to individual TGC/ABC participants is not prorated,



then no more than fifteen percent of the number of seats contracted for may be sold to persons whose names were on the standby list relating to such flight.

(8) A TGC/ABC must be "round trip" (i.e., including both a departure and return flight).

(9) If the cost of the TGC/ABC is prorated among participants, then a TGC/ABC must be for a minimum duration of at least seven days in the case of North American charters, and a minimum duration of at least ten days in the case of all other charters; but if the cost of individual TGC/ABC participants is not prorated, then during the period of April 1 to October 31, the TGC/ABC must provide for a minimum duration of at least fourteen days, and during the period of November 1 to March 31, the minimum duration must be at least ten days: Provided, however, That the minimum duration of a non-prorated North American TGC/ABC need not be greater than seven days.

(10) If the cost of the TGC/ABC is prorated among participants, then commingling of TGC/ABC groups with other categories of charter traffic is permitted, but if the cost to individual TGC/ABC participants is not prorated, then no commingling of TGC/ABC groups with other categories of charter traffic shall be permitted.

(11) The direct air carrier shall maintain a list of the passengers actually carried on each TGC/ABC flight.

(Secs. 101(3), 204(a), 401, 402, 407, 416 and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737 (as amended by 75 Stat. 467, 76 Stat. 143, 82 Stat. 867, 84 Stat. 921), 743, 754, 757, 766, 771, and 797; 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, and 1502.)

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND

Secretary

(SEAL)



## SUPPLEMENT TO APPENDIX

For convenient reference there is set forth in the following pages 29a-46a, the text of the travel group charter regulations of the Civil Aeronautics Board as published in the CCH Aviation Law Reports, including the amendments effected by the Board's regulations SPR-74 of March 15, 1974 (the order sought to be reviewed in this case).

New matter added to the Board's travel group charter regulations by SPR-74 has been underscored in §§372a.2, 372a.31, 372a.40 and 372a.60. The matter deleted from §372a.2, but transferred to §372a.22 as a new paragraph (e), has been marked by a caret and dotted lines.

## PART 372a—TRAVEL GROUP CHARTERS\*

[§ 11,701]

Subpart A—General Provisions		Sec.
372a.1	Applicability.	
372a.2	Definitions.	
372a.3	Waivers.	
372a.4	Enforcement.	
372a.5	Termination of part.	
372a.6	Computation of time.	
Subpart B—General Conditions and Limitations		Sec.
372a.10	Travel group charter general requirements.	
372a.11	Initial deposits.	
372a.12	Conditions precedent to contracts.	
372a.13	Assignments.	
372a.14	Pro rata charter price; minimum, maximum, adjusted.	
372a.15	Full payment of charter price; refunds.	
372a.16	Payment to direct air carrier(s).	
372a.17	No intermingling of passengers.	
372a.18	Cancellation of charter.	
Subpart C—Requirements Applicable to Charter Organizer and Foreign Charter Organizer		
372a.20	Exemptions.	
372a.20a	Jurisdiction over foreign charter organizers.	
372a.20b	Approval of certain interlocking relationships.	
372a.20c	Effect of exemption on antitrust laws.	
372a.21	Suspension of exemption authority.	
372a.22	Operating authorization of charter organizer.	
372a.23	Discrimination.	
372a.24	Methods of competition.	
372a.25	Surety bond and depository agreement.	
372a.26	Prohibition on operations unless tariffs are observed.	
372a.27	Charter costs.	
372a.28	Statements of charges.	
372a.29	Contract between charter organizer and charter participants.	
372a.30	Post-flight accounting report.	
372a.31	Record retention.	
Subpart D—Requirements Applicable to Direct Air Carrier		
372a.40	Charter not to be performed unless in compliance with part.	
372a.41	Direct air carriers to identify enplanements.	
372a.42	No commissions to be paid.	
Subpart E—Reporting Requirements		
372a.50	Reporting requirements.	
Subpart F—Foreign-Originating Travel Group Charters		
372a.60	Foreign-originating travel group charters.	

**AUTHORITY:** The provisions of this Part 372a issued under sections 101(3), 204(a), 401, 402, 407, 416(a) and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737 (as amended), 743, 754 (as amended), 757, 766, 771, and 788; 49 U. S. C. 1301, 1324, 1371, 1372, 1377, 1386 and 1481.

## SUBPART A—GENERAL PROVISIONS

[§ 11,702]

§ 372a.1 **Applicability.** This part establishes the terms and conditions governing the furnishing of travel group charters in air transportation by direct air carriers, including foreign air carriers, and by travel group charter organizers, including foreign charter organizers. This part also relieves such charter organizers (other than foreign charter organizers) from various provisions of Title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling them to provide travel group charters utilizing aircraft chartered from such direct air carriers. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

[§ 11,703]

§ 372a.2 **Definitions.** As used in this part, unless the context otherwise requires—

"Charter" means a travel group charter.

"Charter contract" means a contract for air transportation made by and between one or more direct air carriers and charter participants acting through a charter organizer.

"Charter organizer" means a travel group charter organizer.

"Charter participant" means a member of a travel group who is a party to a contract, either as a main list participant or as an assignee of a main list participant.

"Direct air carrier" means (1) an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401 of the Act, or (2) a foreign air carrier which holds a permit issued under section 402 of the Act.

"Foreign charter organizer" means any person not a citizen of the United States, as defined in section 101(13) of the Act, (other than a direct foreign air carrier) who is (a) engaged in the formation of travel groups for transportation on travel group charters which originate in a for-

\* As issued, effective September 27, 1972, 37 F. R. 20808.



sign country and over whom the Board has declined to exercise its jurisdiction, or (b) engaged in the formation of travel groups for transportation on travel group charters which originate in the United States who holds a permit issued pursuant to section 402 of the Act authorizing such transportation.

"Main list participant" means a member of a travel group who has duly authorized a charter organizer to enter his name on the main list filed with the Board pursuant to this part.

"North American charter" means a travel group charter between a point or points in any State of the United States, the District of Columbia, Puerto Rico or the U. S. Virgin Islands, on the one hand, and a point or points in any other State of the United States or in Canada, Mexico or the "Islands of the Caribbean" (as defined in Part 207 (14 CFR Part 207)), on the other hand.

"Person" means any individual, firm, association, partnership or corporation.

"Pro rata charter price" means each participant's share of the total charter price payable to the direct air carrier(s), plus service charge.

"Round-trip" refers to any round, open-jaw or circle trip which includes an outbound flight and an inbound flight returning to a point no more than 50 air miles from the point of origin.

"Service charge" means the compensation which the charter organizer may receive from each charter participant for organizing the group and acting as its agent in arranging for the charter transportation and services related thereto.

"Standby list member" means a member of a travel group who has duly authorized a charter organizer to enter his name on the standby list filed with the Board pursuant to this part.

"Travel group" means the aggregate of main list participants and standby list members.

"Travel group charter" means a round-trip charter to be performed by one or more direct air carriers which is arranged and sponsored by a charter organizer for a travel group, and which meets the requirements set forth in §§ 372a.10 or 372a.60, whichever is applicable.

"Travel group charter organizer" means (1) any citizen of the United States, as defined in Section 101(13) of the Act (other

than a direct air carrier), who is authorized hereunder to engage in the formation of travel groups in accordance with the provisions of this part; or (2) a foreign charter organizer.

[§ 372a.2 as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379; Amendment No. 5, effective April 22, 1974, 39 F. R. 10886.]

#### [§ 11,704]

§ 372a.3 Waivers. A waiver of any of the provisions of this part may be granted by the Board upon its own initiative, or upon the joint submission by a direct air carrier and a charter organizer of a written request therefor not less than 30 days prior to the flight to which it relates, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

#### [§ 11,705]

§ 372a.4 Enforcement. In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U. S. District Court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

#### [§ 11,706]

§ 372a.5 Termination of part. The exemption provided by this part, shall terminate on December 31, 1975, and shall not apply to any charter, the return leg of which is scheduled to be performed subsequent to such date of termination.

#### [§ 11,706a]

§ 372a.6 Computation of time. In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so

§ 11,704 § 372a.3

© 1974, Commerce Clearing House, Inc.

A matter debated  
transferred to  
§ 372a.22(e)

computed is to be included, unless it is a Saturday, Sunday, or legal holiday for the Board, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor holiday.

[§ 372a.6 as added by Amendment No. 2, effective March 2, 1973, 38 F. R. 6379.]

#### SUBPART D—GENERAL CONDITIONS AND LIMITATIONS

##### [§ 11,707]

§ 372a.10 Travel group charter general requirements. A travel group charter authorized under this part shall meet the following requirements:

(a) The charter must be arranged and sponsored by a charter organizer whose sole interest in the charter contract is as agent for the charter participants who become parties thereto, and not as agent for the direct air carriers.

(b) The charter contract must be for 40 or more seats.

(c) The charter must be on a round-trip basis, but the departing flight and the returning flight need not be performed by the same direct air carrier: *Provided, however*, That if the air transportation is to be performed by more than one direct air carrier, then there shall be a single charter contract to which the charter participants (acting through the charter organizer) and all such direct air carriers (acting jointly and severally) shall be parties.

(d) There must be a minimum duration of seven (7) days, in the case of North American charters, and a minimum duration of ten (10) days, in the case of all other charters. The first day shall be the day that the originating flight takes off; the last day shall be the day the returning flight lands.

(e) The transportation portion thereof must be performed by direct air carriers which hold a certificate of public convenience and necessity under section 401 of the Act or a permit under section 402 of the Act.

(f) Passengers transported pursuant to the charter shall consist solely of charter participants, no less than 80 percent of whom shall be main list participants, plus tour conductors authorized to accompany the charter participants in accordance with this part.

(g) The total cost to each participant shall be the sum of the pro rata cost of

air transportation, the service charge of the charter organizer, and the charge for land accommodations, if any.

(h) The sole compensation to be received by the charter organizer with respect to air transportation shall be the service charge paid by the charter participants.

##### [§ 11,708]

§ 372a.11 Initial deposits. Each main list participant, upon executing the contract between participants and organizer, shall pay at least an initial deposit of 25 percent of the minimum pro rata charter price specified in the charter contract (or of the aggregate of the minimum pro rata charter prices specified in the contract, if there is more than one direct air carrier). This initial 25-percent deposit shall be nonrefundable to a charter participant who defaults in making any payment on the pro rata charter price subsequent to the filing of the charter contract, except as provided in §§ 372a.15(g) and 372a.18.

##### [§ 11,709]

§ 372a.12 Conditions precedent to contracts. (a) The charter contract and the contract between the charter participants and the charter organizer shall become binding on each participant at the time he becomes a party thereto (subject to his right to receive a full refund if he cancels pursuant to paragraph (b) of this section, or defaults for cause pursuant to § 372a.15 (g), or if he cancels pursuant to a right specifically granted in the contract with the organizer), but after the expiration date specified in the option of the direct air carrier filed with the Board pursuant to § 372a.22(a)(1), no new contractual rights and obligations hereunder may be created, and any existing rights and obligations shall become null and void (other than the right of the participants to receive full refund of any payments already made) unless all of the following conditions have been met:

(1) The number of main list participants plus the number of tour conductors (which shall not exceed the maximum number permitted under this part) is equal to the number of seats specified in the charter contract;

(2) Each main list participant has paid at least an initial deposit of 25 percent of the minimum pro rata charter price specified in the charter contract; and

(3) The charter contract has been timely filed with the Board.

##### § 372a.12(a) [§ 11,709]



(b) At any time prior to 120 days preceding the scheduled flight date, a participant may submit to the organizer written notice of his cancellation, regardless of cause, and he shall thereupon be entitled to receive forthwith a refund of all moneys credited to his account, without deduction or penalty of any kind.

[§ 372a.12 as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379.]

[¶ 11,710]

§ 372a.13 Assignments. At any time during the 120-day period preceding the scheduled flight departure date, a charter participant may assign his interest in the charter, but only in accordance with the following:

(a) The assignee must be a standby list member.

(b) No more than 20 percent of the main list participants may assign their interests.

(c) An assignment may be effected only by the charter organizer.

(d) The price for an assigned interest shall not exceed the total amount of pro rata charter price installments theretofore paid by the assignor, which amount shall then be credited to the account of the assignee.

(e) The charter organizer may charge the assignor a transfer fee not in excess of 5 percent of the minimum pro rata charter price.

(f) The charter organizer shall use his best efforts to effect an assignment, either at the request of a charter participant or upon the default of a charter participant in making any payment on the pro rata charter price.

[§ 372a.13 as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379.]

[¶ 11,711]

§ 372a.14 Pro rata charter price; minimum, maximum, adjusted. (a) The amount of the minimum pro rata charter price shall be equal to the total charter price for the total number of seats specified in the contract (including seats to be occupied by tour conductors) divided by the maximum number of charter participants, plus the service charge.

(b) The amount of the maximum pro rata charter price shall be equal to 20 percent more than the minimum.

¶ 11,710 § 372a.12(b)

(c) The adjusted pro rata charter price shall reflect the pro rata increase resulting from defaults in payments by participants, refunds made to participants pursuant to § 372a.15(g), and, if the contract so provides, an increase in the total charter price to the extent permitted under § 372a.26.

(d) The cost of the charter flight shall be prorated equally among all charter participants and no charter participant shall be allowed free or reduced-rate transportation: *Provided, however*, That, where land accommodations are included in the charter, tour conductors may be transported, if the number of such conductors is specified in the contract between the charter organizer and the participants, and is not more than one tour conductor for each 40 charter participants.

[§ 372a.14 as amended by Amendment No. 4, effective January 7, 1974, 39 F. R. 1746.]

[¶ 11,712]

§ 372a.15 Full payment of charter price; refunds. (a) No later than 60 days prior to the scheduled date of flight departure, there shall be due from each charter participant full payment of the minimum pro rata charter price, together with full payment of the pro rata share of any increase in the total charter price, to the maximum extent permissible under § 372a.26, as embodied in a tariff which has by that time become effective, or which has been duly filed with the Board bearing an effective date no later than 60 days prior to the scheduled date of flight departure. The contract between the participants and the organizer may also provide for the payment at the same time of a pro rata reserve deposit which shall be applied, as needed, toward payment of any adjustment in pro rata charter price resulting from defaults in payments by participants and refunds to participants pursuant to paragraph (g) of this section: *Provided, however*, That the total sum of the minimum pro rata charter price plus such reserve deposit, together with the pro rata share of any increased charter price which has become due, as described hereinabove, shall not be greater than the maximum pro rata charter price: *And provided further*, That any portion of such reserve deposit as is not needed, or any portion of such pro rata share of an increased charter price received with respect to a tariff which has not been permitted by the Board to become effective by the 60th day prior to the scheduled date of flight departure, shall be forthwith refunded pro rata.

© 1974, Commerce Clearing House, Inc.

(b) Upon default by any participant in making such payment the charter organizer shall use his best efforts to effect assignment of his interest, in accordance with the provisions of § 372a.13, and the assignee shall thereupon become liable in place and instead of the assignor for the amount payable under paragraph (a) of this section.

(c) If the interest of any defaulting participant has not been assigned prior to the date specified in the contract for the computation of the tentative adjusted price, pursuant to § 372a.29(d), then the initial 25-percent deposit of each such defaulting participant (unless refunded to him pursuant to paragraph (g) of this section) shall be applied toward payment of the charter price, and the pro rata charter price for each remaining participant shall be increased by an amount equal to his pro rata share in the unpaid balance of the defaulting participant's charter price.

(d) If the tentative adjusted pro rata charter price, as computed on the date specified therefor in the contract, pursuant to § 372a.29(d), exceeds the specified maximum, then the charter shall be canceled and all moneys paid by the charter participants shall be refunded to them forthwith, without deduction or penalty of any kind: *Provided, however*, That the initial 25-percent deposit of each defaulting participant (unless refunded to him pursuant to paragraph (g) of this section), may be paid over as liquidated damages to the direct air carrier and the charter organizer pursuant to the terms of the charter contract and the contract between the organizer and participants.

(e) If the tentative adjusted pro rata charter price, as computed on the date specified therefor in the contract, pursuant to § 372a.29(d), does not exceed the specified maximum, then each participant shall forthwith pay the balance, if any, due on such adjusted pro rata charter price and all moneys theretofore paid by charter participants shall be nonrefundable, except as provided in paragraph (f) of this section: *Provided, however*, That if the charter contract is subsequently canceled for any of the reasons set forth in § 372a.18, then all moneys paid by the charter participants shall be refunded to them forthwith, without deduction or penalty of any kind.

(f) The final adjusted pro rata price shall represent the tentative adjusted pro rata price as reduced by each participant's pro rata share of the total of any defaulted payments made subsequent to the date on which the tentative adjusted price was computed, and the amount by which

the tentative adjusted price exceeds the final adjusted price shall be refunded by the organizer at the time he submits the post-flight accounting report required by § 372a.30.

(g) If the charter organizer receives written notice, prior to the date specified in the contract for the computation of the tentative adjusted price, pursuant to § 372a.29(d), that a charter participant has died, or that, as a result of accident or illness, verified by a medical doctor, it appears probable that he will be unable to participate in the travel group charter, then the charter organizer shall refund the charter price payments already made by such participant.

[§ 372a.15 as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379; Amendment No. 4, effective January 7, 1974, 39 F. R. 1746.]

#### [§ 11,713]

§ 372a.16 Payment to direct air carrier(s). The direct air carrier(s) shall be paid in full for the cost of the round-trip charter transportation prior to scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carriers under Parts 207, 208, 212 and 214, as the case may be.

#### [§ 11,714]

§ 372a.17 No intermingling of passengers. There shall be no intermingling of passengers and each planeload group, or less-than-planeload group, shall move together as a group, on both legs of the air transportation portion of the trip, except under emergency circumstances provided for in the basic charter regulations applicable to the direct air carrier under Parts 207, 208, 212 and 214, as the case may be.

#### [§ 11,715]

§ 372a.18 Cancellation of charter. A charter authorized pursuant to this part shall be canceled and all payments by the charter participants shall be refunded in full if any of the following events occurs:

(a) The charter contract is not timely filed with the Board, in accordance with § 372a.22;

(b) The charter organizer's authority is suspended;

(c) A charter organizer's surety bond is canceled without substitution of a replacement satisfactory to the Board (see § 372a.25);

(d) A direct air carrier cancels the charter pursuant to the terms of the charter contract;



(e) The charter is for less than the entire capacity of an aircraft and the remaining capacity of the aircraft is not chartered to one or more other eligible persons in accordance with the applicable provisions of Parts 207, 208, 212 or 214, as the case may be.

**SUBPART C—REQUIREMENTS APPLICABLE TO CHARTER ORGANIZER AND FOREIGN CHARTER ORGANIZER**

**[§ 11,716]**

§ 372a.20 **Exemption.** Subject to the provisions of this part and the conditions imposed herein, charter organizers (other than foreign charter organizers) are hereby relieved from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit them to organize and arrange travel group charters:

Section 401.

Section 403.

Section 404(a), except the requirement to provide adequate service in connection with travel group charters operated hereunder.

Section 405(b).

Sections 407(b) and (c).

Sections 408(a) and 409, except control or interlocking relationships with direct air carriers.

Section 412.

**[§ 11,717]**

§ 372a.20a **Jurisdiction over foreign charter organizers.** The Board declines to exercise its jurisdiction over foreign charter organizers with respect to travel group charters which originate in a foreign country. The Board reserves the right to exercise its jurisdiction over any foreign charter organizer at any time if it finds that such action is in the public interest.

**[§ 11,717a]**

§ 372a.20b **Approval of certain interlocking relationships.** To the extent that any officer or director of a charter organizer would be in violation of any of the provisions of section 409(a)(3) and (6) of the Act by participating in interlocking relationships covered by the exemption granted by § 372a.20, such participation is hereby approved by the Board.

[§ 372a.20b as added by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379.]

**§ 11,716 § 372.18a(e)**

**[§ 11,717b]**

§ 372a.20c **Effect of exemption on antitrust laws.** The relief granted by §§ 372a.20 and 372a.20b from sections 408, 409, and 412 of the Act shall not constitute an order under such sections within the meaning of section 414 of the Act, and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

[§ 372a.20c as added by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379.]

**[§ 11,718]**

§ 372a.21 **Suspension of exemption authority.** The Board reserves the power to suspend the exemption authority of any charter organizer, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

**[§ 11,719]**

§ 372a.22 **Operating authorization of charter organizer.** A charter organizer is authorized hereunder to organize and operate a travel group charter only in accordance with the provisions of this part, and subject to the following conditions:

(a) No charter organizer shall sell, or offer to sell, or solicit persons to participate in, or otherwise advertise, a charter trip, or receive any money from any prospective participant in connection therewith, until at least 15 days after he and the direct air carrier(s) have jointly filed with the Board (Supplementary Services Division, Bureau of Operating Rights) in duplicate:

(1) an option from the direct air carrier(s) under which the carrier(s) obligates itself for a specified period, which shall expire no later than 90 days prior to scheduled date of departure, to enter into a charter contract with the charter organizer as agent for the charter participants; *Provided, however,* That if the air transportation on the departing flight and the returning flight is to be performed by more than one direct air carrier, then there shall be a single option granted to the charter organizer by all such direct air carriers, acting jointly and severally;

(2) a copy of the proposed charter contract, setting forth specific terms and conditions upon which the carrier(s) will perform the charter, including the number of seats (specifically stating, where applicable,

© 1974, Commerce Clearing House, Inc.

[¶ 11,719—continued.]

the number of seats to be occupied by tour conductors), the type of aircraft, the departure and return dates and points, and the minimum and maximum pro rata charter price, which terms and conditions shall conform to the currently effective tariff or tariffs of the direct air carrier(s), as identified by specific tariff citation;

(3) a copy of the proposed contract between the organizer and the participants;

(4) a duly subscribed and sealed surety bond, and if applicable a copy of a fully executed depository agreement, as provided in § 372a.25; and

(5) samples of the promotional material which the charter organizer plans to use in his solicitation for charter participants: *Provided, however,* That if during the 15-day period following filing hereunder, the charter organizer has been notified that the Board has rejected such filing for noncompliance with this part, then he shall not sell or offer to sell, solicit or advertise such charter trip until he has subsequently been notified by the Board that the filing has been accepted.

(b) No earlier than 120 days, but no later than 90 days, prior to the scheduled date of departure, the charter organizer and the direct air carrier(s) shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate, the following information, except that on and after May 30, 1973, the information required by subparagraphs (2) and (3) hereinafter shall be filed in the manner prescribed in paragraph (d) hereinbelow:

(1) a fully executed charter contract;

(2) a main list setting forth the names of participants in alphabetical order, their addresses and telephone numbers;

(3) a standby list, no larger than three times the number of main list participants, setting forth the same information called for in subparagraph (2) above, with respect to standbys who have authorized the organizer to include them in such list, as prospective assignees of main list participants, or a statement that there are no standby list members;

(4) a statement of the charter organizer affirming that each main list participant (i) has entered into a contract with the organizer as provided in this part, (ii) has paid his initial 25-percent deposit, and (iii) has been furnished, no later than the time when he entered into such contract with

the organizer, with an explanatory statement, in the form set forth in Appendix A; and

(5) a statement of the depository bank, if any, affirming that it has received a deposit of no less than 25 percent of the total charter price payable to the direct air carrier(s).

(c) The service charge shall be separately stated and shall be equal for all participants.

(d) On and after May 30, 1973, CAB Form 372a, attached hereto as Appendix D [Not reproduced], shall be used in filing the travel group charter main and standby lists described in paragraphs (b)(2) and (b)(3) of this section. An original and two photostatic or similarly reproduced copies (not carbons) of Form 372a, prepared in conformance with the instructions thereon, and accompanied by a self-addressed and postage-prepaid return envelope, shall be filed with the Board (Supplementary Services Division, Bureau of Operating Rights). The Board will stamp the original and two photostatic or similarly reproduced copies of Form 372a so as to verify their receipt and identify the travel group charter to which they pertain, and will return the two stamped copies for use by the direct air carrier in complying with its obligations to identify enplaning charter flight participants, note the documentary source and number, and file post-flight reports thereon, as required by § 372a.41 and § 372a.50(a).

(e) With respect to the charter contract, such charter organizer acts solely as agent; for, and holds all moneys received from; any source in connection therewith as agent; for, the members of the travel group.

[§ 372a.22 as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379; amended by Amendment No. 3, effective May 5, 1973, 38 F. R. 10634; Amendment No. 5, effective April 22, 1974, 39 F. R. 10886.]

[¶ 11,720]

§ 372a.23 Discrimination. No charter organizer shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

[¶ 11,721]

§ 372a.24 Methods of competition. No charter organizer shall engage in unfair or

§ 372a.24 ¶ 11,721

Aviation Law Reports

matter previously contained in § 372a.2



deceptive practices or unfair methods of competition in air transportation or the sale thereof.

¶ 11,722

§ 372a.25 Surety bond and depository agreement. (a) Except as provided in paragraph (b) of this section, a charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise jurisdiction), before selling or offering to sell, soliciting or advertising any charter flight, shall furnish and file with the Board a surety bond in one of the following amounts dependent upon the length of the charter or series of charters: (1) for a charter or series of charters of 2 weeks or less, a bond in an amount of not less than the charter price for the air transportation to be furnished in connection with such charter or series of charters; (2) for a charter or series of charters of more than 2 weeks but less than 4 weeks, a bond in an amount of not less than twice the charter price; and (3) for a charter or series of charters of 4 weeks or more, a bond in an amount of not less than three times the charter price: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the amounts paid by him to the charter organizer with respect to the charter.

(b) In lieu of furnishing a surety bond as provided under paragraph (a) of this section, the direct air carriers and the prospective charter organizer (except where he is a foreign charter organizer over whom the Board has declined to exercise jurisdiction) may elect, before selling or offering to sell, soliciting or advertising any charter flight, to comply with the requirements of subparagraphs (1) and (2) of this paragraph as follows:

(1) a surety bond in the following minimum amounts: (i) if the charter is for air transportation only, a bond in the amount of \$5,000 per round-trip charter flight, up to a maximum of \$50,000 for a series of 10 or more round-trip flights; or (ii) if the charter involves land accommodations in addition to air transportation, a bond in the amount of \$10,000 per round-trip flight, up to a maximum amount of \$100,000 for a series of 10 or more round-trip flights: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the amounts paid by such charter participant to the charter organizer with respect to the charter; and

(2) A copy of an agreement made between the direct air carrier(s), the charter organizer and a designated bank, by the

¶ 11,722 § 372a.25

terms of which all sums paid by participants to the charter organizer shall be deposited with and maintained by the bank in a separate escrow account, subject to the following conditions:

(i) The participants shall pay by check or money order payable to the bank, and any cash received by the charter organizer from a participant shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the cash;

(ii) The bank shall pay the direct air carrier(s) the charter price for the transportation not earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the direct air carrier: *Provided, That,* in the case of a round-trip charter contract to be performed by one carrier, the total round-trip charter price shall be paid to the carrier not earlier than 60 days prior to the scheduled day of departure of the originating flight;

(iii) Refund to participants from sums in the escrow account shall be paid by the bank directly to such participants, upon receipt of written notification from the charter organizer or a direct air carrier specifying the facts warranting such refund under this part;

(iv) As used in this section, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(v) The bank shall maintain a separate accounting for each charter;

(vi) After the charter price has been paid in full to the direct air carrier(s), the bank shall pay funds from the account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing surface accommodations or services, if any, in connection with the charter or series of charters, upon presentation to the bank of vendors' bills and upon certification by the charter organizer of the amounts payable for such surface accommodations or services and the persons or companies to whom payment is to be made: *Provided, however,* That the total amounts paid by the bank pursuant to subdivisions (ii) and (vi) of this subparagraph shall not exceed either the total cost of air transportation, or 80 percent of the total deposits received by the bank (less any refunds made to charter participants pursuant to subdivision (iii) of this subparagraph), whichever is greater;

© 1974, Commerce Clearing House, Inc.

(vii) Except as provided in subdivisions (ii), (iii) and (vi) of this subparagraph, the bank shall not pay any funds from the account prior to two banking days after completion of each charter, when the balance in the account shall be paid to the charter organizer, upon certification of the completion date by the direct air carrier performing the return flight.

(c) The bond required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the charter organizer and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the charter organizer and the charter participants, and shall be in the form set forth as Appendix B. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Board may identify the bond with the specific charter or charters to which it relates: *Provided, however*, That these data may be set forth in an addendum attached to the bond which addendum must be signed by the charter organizer and the surety company. It shall be effective on or before the date the surety bond is filed with the Board. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier(s) and the charter organizer by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charter or charters shall be canceled.

(d) The bond required by this section shall provide that unless the charter participant files a claim with the charter organizer, or, if he is unavailable, with the surety, within sixty (60) days after termination of the charter, the surety shall be released from all liability under the bond to such participant. The contract between the

charter organizer and the charter participant shall contain notice of this provision.

[§ 372a.25 as amended by Amendment No. 1, effective November 1, 1972, 37 F. R. 23711.]

[§ 11,723]

§ 372a.26 Prohibition on operations unless tariffs are observed. No charter organizer shall charter aircraft to provide air transportation to charter participants, and no direct air carrier shall operate such aircraft, except in accordance with the rates, fares, and charges and all applicable rules, regulations, and other provisions for such transportation as set forth in the currently effective tariff or tariffs of the direct air carrier transporting charter participants; and no such organizer shall demand, collect, accept, or receive, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, any portion of the rates, fares or charges so specified in the tariffs of such direct air carrier, and shall not demand, accept, or receive, either directly or indirectly, any privilege, service, or facility except those specified in the currently effective tariffs of such air carrier: *Provided, however*, That no direct air carrier shall file a tariff which has the effect of changing the charter price specified in any option or proposed charter contract previously filed under § 372a.22; except that, if so provided in an option or proposed charter contract filed after January 7, 1974, a direct air carrier may subsequently file a tariff which will have the effect of changing, no later than 60 days prior to the scheduled date of flight departure, the pro rata charter price, but the effect of such change shall be limited either (i) to cause or be a factor in causing the pro rata charter price to increase up to a maximum of 20 percent over the minimum pro rata charter price, or (ii) if the increase is more than 20 percent, to require cancellation of the TGC.

[§ 372a.26 as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379; Amendment No. 4, effective January 7, 1974, 39 F. R. 1746, corrected 39 F. R. 3820.]

[§ 11,724]

§ 372a.27 Charter costs. (a) The charter organizer shall not make any additional charges to the charter participants, other than his service charge for consummating the charter (or liquidated damages, as permitted hereunder, if the charter is canceled upon default of participants), and such transfer fee as may be due him from an individual participant for effecting an assignment, whether or not such additional charge is

§ 372a.27(a) § 11,724

Aviation Law Reports



only nominal or is characterized as a membership fee, registration fee, reimbursement for expenses, or otherwise.

(b) No part of the service charge shall be retained by the charter organizer unless the charter is completed: *Provided, however*, That the charter organizer may retain as liquidated damages a portion of the initial 25-percent deposits forfeited by defaulting participants in the event of cancellation of a charter, pursuant to the provisions of the charter contract and the contract between the charter participants and the charter organizer and in accordance with § 372a.15 of this part. Neither the charter organizer nor any member of the charter group may receive any gratuities or compensation, direct or indirect, from the carrier(s), or any organization which provides any service to the charter group with respect to air transportation. Nothing in this section shall prevent any member of the charter group from accepting such advertising and goodwill items as are customarily extended to passengers (e.g., a canvas traveling bag or a money exchange computer).

[§ 372a.27 as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379.]

[§ 11,725]

§ 372a.28 Statements of charges. (a) Any announcement, statement, or solicitation material to prospective charter participants giving price per seat shall state that the price is dependent upon the number of seats sold, and shall also set forth the minimum and maximum pro rata charter price, as well as the service charge. It shall also state that the minimum pro rata charter price is subject to an increase of no more than 20 percent as a result of defaults by participants, or, where the contract so provides, a subsequent increase in the charter price in the documents filed under § 372a.22, or both, and that the charter will be canceled if the pro rata charter price increases by more than 20 percent over the minimum pro rata charter price. The cost of ground arrangements, if any, shall be stated separately.

(b) All such announcements, statements or solicitation material shall also identify the carrier(s) and the type of aircraft to be used for the charter, and shall state that for a person to be eligible to be a passenger on a charter flight he must be included in the main list or the standby list to be filed no later than 90 days before flight departure.

(c) All billings to charter participants shall separately state the pro rata cost of air transportation, the service charge, the trans-

fer fee and the cost of land accommodations, if any.

[§ 372a.28 as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379, Amendment No. 4, effective January 7, 1974, 39 F. R. 1746.]

[§ 11,726]

§ 372a.29 Contract between charter organizer and charter participants. The contract between the charter organizer and participants shall set forth the specific terms and conditions upon which the charter will be performed, including:

(a) The terms required by § 372a.22 to be specifically set forth in the charter contract.

(b) The terms required by § 372a.28 to be specifically set forth in statements of charges.

(c) The schedule of payments and the date by which the minimum price must be fully paid, which date shall not be later than 60 days before the scheduled departure date;

(d) The date on which the tentative adjusted pro rata price shall be computed, which date shall not be later than 45 days before the scheduled departure date;

(e) If applicable, the name and address of the depository bank and a statement that all installment payments are to be by check or money order made payable to the designated depository bank;

(e-1) Whether trip health and accident insurance is available and, if so, that upon request the charter organizer will furnish details thereof;

(f) The conditions upon which the contract between the charter organizer and the charter participants may be canceled, and the rights and obligations of all parties in the event of such cancellation;

(g) The conditions upon which the charter contract may be canceled, and the rights and obligations of all parties in the event of such cancellation;

(h) The conditions governing assignment of a participant's interest;

(i) The dollar amounts of the direct air carrier's(s') liability limitations for passengers' baggage, as set forth in the carrier's(s') tariff.

(j) The name and address of the surety and a statement that unless the charter participant files a claim with the charter organizer, or, if he is unavailable, with the

© 1974, Commerce Clearing House, Inc.

§ 11,725 § 372a.27(b)

surety, within sixty (60) days after termination of the charter, the surety shall be released from all liability under the bond to such charter participant (see § 372a.25(d)).

[§ 372a.29 as amended by Amendment No. 1, effective November 1, 1972, 37 F. R. 23711; Amendment No. 2, effective March 6, 1973, 38 F. R. 6379.]

[§ 11,727]

**§ 372a.30 Post-flight accounting report.** Not later than 10 days following completion of the charter, the charter organizer shall submit to each participant a statement in the form prescribed in Appendix C, setting forth the final adjusted pro rata price, which shall take into account all payments made by charter participants subsequent to the date on which the tentative adjusted price was computed, and such statement shall be accompanied by any refunds then due to the participants.

[§ 11,728]

**§ 372a.31 Record retention.\*** (a) Every charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise its jurisdiction) conducting a travel group charter pursuant to this part shall retain for 2 years after completion of the charter or series of charters true copies of the following documents at its principal or general office in the United States (or, if it is a foreign charter organizer, then at its principal or general office):

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant;

(2) All statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the travel group charter or series of charters.

(a-1) Every charter organizer (other than a foreign charter organizer over whom the Board has declined to exercise its jurisdiction) conducting a travel group charter pursuant to Subpart F of this part shall retain for 2 years after completion of the charter at its principal or general office in the United States true copies of all documents which it is required by the applicable rules of the originating country to file with the regulatory authorities of that country or to maintain in its own files for any specified period.

\* Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representa-

(b) Every such charter organizer shall make the documents required to be retained by the provisions of the foregoing paragraphs (a) or (a-1), as the case may be, available upon request by an authorized representative of the Board and shall permit such representative to make such notes and copies thereof as he deems appropriate.

[§ 372a.31 as amended by Amendment No. 5, effective April 22, 1974, 39 F. R. 10886.]

**SUBPART D—REQUIREMENTS  
APPLICABLE TO DIRECT  
AIR CARRIER**

[§ 11,729]

**§ 372a.40 Charter not to be performed unless in compliance with part.** A direct air carrier shall not perform air transportation in connection with a travel group charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with (or, if it is a foreign-originated charter to which Subpart F applies, that all provisions of the rules of the country of origin have been complied with), and that the charter organizer's authority under this part has not been suspended by the Board (or, if it is a foreign-originated charter to which Subpart F applies, that the charter organizer's authority has not been suspended by the regulatory authorities of the country of origin): *Provided, however,* That except with respect to foreign-originated charters operated pursuant to Subpart F of this part, where a travel group is organized by a foreign charter organizer over whom the Board has declined to exercise its jurisdiction pursuant to § 372a.20a, no direct air carrier may perform air transportation in connection with such travel group charter unless the charter is formed and implemented in accordance with the general conditions and limitations set forth in Subpart B of this part and the charter organizer performs all the acts and duties which this part requires to be performed by charter organizers within the Board's jurisdiction, other than the provisions set forth in §§ 372a.22 (b)(4)(iii), 372a.25 and 372a.31.

[§ 372a.40 as amended by Amendment No. 5, effective April 22, 1974, 39 F. R. 10886.]

tions, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both. Title 18, U. S. C. § 1001.

**§ 372a.40 § 11,729**



## [§ 11,730]

§ 372a.41 Direct air carriers to identify enplanements. (a) A direct air carrier shall retain a true copy of each document which it has filed (jointly with the charter organizer) pursuant to section 372a.22(b), and shall make reasonable efforts to verify the identity of all enplaning charter participants (and tour conductors) by use of a document bearing an identifying number. For international flights, the identity of each enplaning charter participant (and tour conductor) shall be verified by means of a passport, or if there be none, by means of any other travel identity document. For domestic flights, a passport or other travel identity document should be used, if available, to identify enplaning charter participants (and tour conductors), but if no such document is available, then any other numbered document, preferably a Social Security card, may be used.

(b) The direct air carrier shall, at the time of enplanement, enter the documentary source of the identification required by paragraph (a) above, including the number appearing on the document, on the passenger list: *Provided, however,* That for flights with respect to which a CAB Form 372a is required to be used by the charter organizer and a stamped copy thereof to be used by the direct air carrier(s), pursuant to § 372a.22(d), the direct air carrier's stamped copy of that form shall be its passenger list.

[§ 372a.41 as amended by Amendment No. 3, effective May 5, 1973, 38 F. R. 10634.]

## [§ 11,731]

§ 372a.42 No commissions to be paid. No commissions, fees or other compensation shall be paid by the direct air carrier to the charter organizer or to any other person in connection with the charter trip.

## SUBPART E—REPORTING REQUIREMENTS

## [§ 11,732]

§ 372a.50 Reporting requirements. (a) Each direct air carrier shall prepare and file with the Board's Bureau of Enforcement within seven days after performing each flight whether departure or return, a list containing the name (in alphabetical order), address, telephone number, and the documentary source of the identification required by § 372a.41(a), including the num-

ber appearing on the document [of each passenger]: *Provided, however,* That for flights with respect to which a CAB Form 372a is required to be used by the charter organizer and a stamped copy thereof to be used by the direct air carrier(s), pursuant to § 372a.22(d), the direct air carrier shall prepare and file its stamped copy of that form in conformance with the instructions thereon.

(b) The direct air carrier shall promptly notify the Board regarding any travel group charter flight covered by a filing under § 372a.22 which is subsequently canceled.

(c) If a charter organizer or foreign charter organizer relies upon the bond-depository option of § 372a.25(b) for compliance with the requirements of that section, the following monthly reports shall be filed with the Board's Bureau of Operating Rights not later than the 10th day of the month succeeding the reporting period: (1) by the depository bank, showing separately for each travel group charter, identified by departure date, the total amount of deposits received and disbursed during the reporting period, and the balance in the depository account at the end of the reporting period; and (2) by the charter organizer or foreign charter organizer showing separately for each travel group charter, identified by departure date, the total amount of customer deposits received by him or his agents, and the amount of refunds made by the bank to charter participants: *Provided,* That the depository bank may, in lieu of (1) above, elect to file a duplicate monthly statement of the same type it provides to depositors showing the information as specified in (1) above. When so elected, the reporting period for the charter organizer or foreign charter organizer in (2) above shall correspond to the reporting period of the bank. The term "bank" shall have the meaning set forth in § 372a.25. The reports shall be certified by the officer in charge of the bank's or the charter organizer's or foreign charter organizer's accounts, as the case may be, and the certification shall be in the following form:

## Certification\*

I, the undersigned .....  
 (Title of officer in ..... of the  
 charge of accounts)  
 ..... do  
 (Full name of reporting company)

knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

© 1974, Commerce Clearing House, Inc.

\* Title 18 U. S. C. Sec. 1001, Crimes and Criminal Procedure, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than 5 years, or both, to

certify that this report and all supporting documents which are submitted herewith, filed for the above indicated period, have been prepared by me or under my direction; that I have carefully examined them and declare that, to the best of my knowledge and belief, the information contained therein is complete and accurate.

.....  
(Signature)

.....  
(Bank's or charter organizer's or  
foreign charter organizer's post  
office address)

Date....., 19....

[§ 372a.50 as amended by Amendment No. 3, effective May 5, 1973, 38 F. R. 10634.]

#### **SUBPART F—FOREIGN-ORIGINATING TRAVEL GROUP CHARTERS**

[§ 11.732a]

**§ 372a.60 Foreign-originating travel group charters.** (a) Notwithstanding the general conditions and limitations set forth in Subpart B of this part or the conditions set forth in §§ 372a.22, 372a.25, 372a.27 through 372a.30, 372a.31(a)(1) of Subpart C of this part, or the prohibitions set forth in § 372a.41 and 372a.42 of Subpart D of this part, or the reporting requirements set forth in Subpart E of this part, direct air carriers and charter organizers (other than a foreign charter organizer over whom the Board has declined to exercise its jurisdiction) are authorized to operate and organize foreign-originating travel group or advance-booking charters (referred to herein as TGC/ABC) in compliance with the applicable rules of the originating country, so long as (1) such foreign rules conform to paragraph (b) of this section, and (2) there is in effect a formal agreement between the originating country and the United States with respect to the charterworthiness of such operations.

(b) The following are the restrictions and conditions to which foreign rules must conform in order for direct air carriers and charter organizers to operate and organize foreign-originating TGC/ABC charters pursuant to paragraph (a) above:

(1) The participants in each TGC/ABC group must travel together on both the outbound and inbound portions of the trip.

(2) Each TGC/ABC contract must cover at least forty (40) seats.

Aviation Law Reports

(3) The list of actual participants (i.e., persons contractually bound to pay for a specifically identified flight) in each TGC/ABC group must be filed with appropriate regulatory authorities at least ninety (90) days in advance of flight departures.

(4) If there is to be a list of "standbys" (i.e., eligible substitutes for participants) for a TGC/ABC, and if the cost of the TGC/ABC is prorated among participants, then the number of such standbys shall not exceed three times the number of participants; but if the cost to individual TGC/ABC participants is not prorated, then the number of standbys shall not be greater than the number of seats contracted for.

(5) No person shall be added to a standby list within ninety (90) days prior to flight departure.

(6) If the cost of the TGC/ABC is prorated among participants, then standbys may be substituted for participants at any time prior to flight departure; but if the cost to individual TGC/ABC participants is not prorated, then standbys may not be substituted for participants within thirty (30) days prior to flight departure.

(7) If the cost of the TGC/ABC is prorated among participants, then no more than twenty percent of the participants in any TGC/ABC group may be persons whose names were included on the standby list for that TGC/ABC flight; but if the cost to individual TGC/ABC participants is not prorated, then no more than fifteen percent of the number of seats contracted for may be sold to persons whose names were on the standby list relating to such flight.

(8) A TGC/ABC must be "round trip" (i.e., including both a departure and return flight).

(9) If the cost of the TGC/ABC is prorated among participants, then a TGC/ABC must be for a minimum duration of at least seven days in the case of North American charters, and a minimum duration of at least ten days in the case of all other charters; but if the cost of individual TGC/ABC participants is not prorated, then during the period of April 1 to October 31, the TGC/ABC must provide for a minimum duration of at least fourteen days, and during the period of November 1 to March 31, the minimum duration must be at least ten days: *Provided, however,* That the minimum duration of a non-prorated North American TGC/ABC need not be greater than seven days.

**§ 372a.60(b) § 11.732a**



(10) If the cost of the TGC/ABC is prorated among participants, then commingling of TGC/ABC groups with other categories of charter traffic is permitted, but if the cost to individual TGC/ABC participants is not prorated, then no commingling of TGC/ABC groups with other categories of charter traffic shall be permitted.

(11) The direct air carrier shall maintain a list of the passengers actually carried on each TGC/ABC flight.

[§ 372a.60 as added by Amendment No. 5, effective April 22, 1974, 39 F. R. 10886.]

[§ 11.733]

#### Appendix A—Description of Travel Group Charters

Under Federal law, charter flights are permitted to be operated in air transportation within, and to or from, the United States. However, the terms and conditions governing participation in charter flights must distinguish this form of travel arrangement from the purchase by an individual passenger of an airline ticket for a regularly scheduled flight. The Civil Aeronautics Board (the Board) is the Federal agency which has the responsibility for prescribing these terms and conditions, and, over the years, several different types of charters have been authorized. Effective September 27, 1972, the Board adopted regulations authorizing a new type of charter, called "Travel Group Charters" (TGC), to be operated on a trial basis, until December 31, 1975. The pertinent regulations are set forth in Part 372a of the Board's Special Regulations (14 CFR Part 372a). Following is a summary of the principal provisions in those regulations as they directly affect participants in a TGC.

**General Description of TGC:** The basic idea of a TGC is that 40 or more persons may enter into a charter contract, by which they hire an aircraft (or part of an aircraft) to provide themselves with round-trip air transportation for a trip which is to last a minimum of 7 days (10 days in some areas) on a pro rata basis, i.e., each charter participant shares equally in the cost of the

charter. The charter contract must be filed with Board several months before the scheduled date of departure.<sup>1</sup> At that time, the charter organizer must also file a "main list" identifying the people who have signed his contract and paid him an initial deposit of at least 25% of the "minimum pro rata charter price" (discussed below) specified in the contract. The number of persons on this "main list" must be equal to the number of seats which the contract specifies will be occupied by "charter participants."<sup>2</sup> At the same time, there may also be filed a "standby list" identifying any person who wants the opportunity to be substituted for a "main list" participant who might subsequently withdraw or default. The number of persons on the "standby list" may not exceed three times the number of "main list" participants, and a person on the "standby list" is under no obligation of any kind unless and until he actually becomes substituted for a "main list" participant. When the flight is performed, all the charter participants must be persons identified in either the "main list" or the "standby list" on file with the Board; and at least 80% of the charter participants must be from the "main list."

**Pro Rata Charter Price:** The "minimum pro rata charter price," which must be set forth in the contract, is an amount equal to the total charter cost for all seats covered by the contract, divided by the maximum number of charter participants, plus the charter organizer's "service charge" (discussed below).

**Example 1:** A charter contract covers 123 seats (of which 3 seats are for tour conductors). The total contract price is \$12,000, and the organizer is to be paid a \$10 "service charge" by each passenger other than a tour conductor. The "minimum pro rata charter price" is \$110 (\$12,000 divided by 120, plus \$10 for the service charge).

If all the seats intended for participants are sold,<sup>3</sup> fully paid for, and no refunds are made, then the minimum pro rata charter price will be the actual price which each charter participant will pay, unless the total

<sup>1</sup> The charter contract and other documents are to be filed no earlier than 120 days, and no later than 90 days, before the scheduled date of departure. Thus, for example, if a TGC is scheduled to depart on July 6, 1973, this filing may be made no earlier than March 8, 1973, and no later than April 9, 1973. (Since the 90th day prior to the scheduled departure is April 7, 1973, a Saturday, the filing deadline is extended to the next business day, April 9th, which is only 88 days prior to departure.)

<sup>2</sup> The only other authorized passengers on the charter flight are tour conductors, whose seats are paid for by the charter participants, but these conductors may be carried only when ground arrangements are required as part of the TGC package. The number of tour conductors must be specified in the contract and may not exceed 1 for each 40 participants.

<sup>3</sup> If not all the seats intended for participants are sold prior to the deadline for filing the contract, then the charter must be canceled and all moneys refunded.

charter price is increased by application of a new tariff. However, if the total charter price is increased, or if a participant defaults (or refund is made because of the death or illness of a participant) then the pro rata price of each remaining participant *must* be increased accordingly. In order to limit the liability of the remaining participants for an increase in the pro rata charter price, the Board has provided for a "maximum pro rata charter price", which is 20% more than the minimum. The minimum pro rata charter price, together with the pro rata share of any lawful increase of the total charter price, must be paid in full by each charter participant *no later than the 60th day* before the scheduled date of flight departure. The charter organizer must determine, *no later than 45 days* before the scheduled departure date, whether pro rata shares of the lawfully increased charter price, defaults and refunds would result in increasing each remaining participant's share beyond the "maximum." If they would, then the charter must be canceled; otherwise each remaining participant must pay the increased "adjusted pro rata price."<sup>\*</sup>

**Example 2:** The minimum price is \$110 (computed as shown in Example 1). The maximum to which each remaining participant's price may be increased is \$132.

**Cancellations and Refunds:** A. Each participant is entitled to a *full refund* of all payments if a TGC is canceled for any of the following reasons:

1. The pre-departure deadline for filing documents with the Board is not met.
2. The charter organizer's authority is suspended by the Board.
3. The charter organizer's surety bond is canceled and there is no replacement made which is satisfactory to the Board.
4. An air carrier cancels the charter pursuant to the terms of the charter contract.
5. The TGC is for less than the entire capacity of an aircraft and the remaining capacity of the aircraft is not chartered to one or more persons eligible under the Board's rules.

B. If a TGC is canceled because, as a result of a lawful increase of the total charter price, defaults or refunds, the adjusted pro rata price would have to be increased beyond the maximum, then each participant not in default is entitled to a *full refund*.

<sup>\*</sup> Once this "adjusted pro rata price" is computed, there can be no further increase in the pro rata price. However, there may be a

Those participants whose defaults necessitated the cancellation are entitled to have refunded only *payments in excess of their initial 25% deposit*; but the 25% deposit itself may be retained as *liquidated damages* for the organizer and/or the air carrier. (Death or illness of a participant before the adjusted pro rata price is computed does not constitute a default and, in such cases, *full refund* is to be made.)

C. Until 120 days prior to the scheduled flight departure date (or until such later date as may be specified in the contract with the organizer for the filing of the final contracts), any participant may give written notice to the organizer that he wishes to withdraw from the group, regardless of his reasons, and he is then entitled to a *full refund* of all payments.

**Example 3:** On January 1, 1973, John Jones signs a contract with an organizer and pays a 25% deposit for a TGC scheduled to depart from New York to London on July 8, 1973. The 120th day prior to flight departure is March 10, 1973 (which is a Saturday). Until the next regular business day, March 12, 1973, Mr. Jones is entitled to give the organizer written notice of his decision to withdraw, without cause or explanation, and to receive a full refund.

**Assignments:** Although a participant's initial 25% deposit is nonrefundable (except for death or illness) after a TGC contract has been filed, his interest in the TGC may be assigned *at any time*, but only to a person who is named in the filed "standby list." The other limitations on assignments are that no more than an aggregate of 20% of the main list participants may assign their interests, and no profit may be made by the assignor. To assure that these conditions are complied with, assignments may be made *only* through the organizer. For performing this function, the organizer may charge a transfer fee in an amount specified in his contract, but not to exceed 5% of the "minimum pro rata charter price."

**Service charge:** In arranging air transportation for a TGC, the organizer acts as agent for the participants and *not for any direct air carrier*. He is therefore not permitted to receive any commission, fee or other compensation from any direct air carrier. As agent for the participants, he is permitted to receive from them a service

subsequent *decrease* in price, as a result of late payments by delinquent participants or as a result of assignments.



charge (in addition to any transfer fees he may earn for arranging assignments). *The Board does not set any maximum or minimum amount for a service charge.* However, the amount of the service charge must be clearly set forth, as a separate item, in the organizer's solicitation material and in his contract, and the service charge must be equal to all participants.

[§ 372a.App. A as amended by Amendment No. 2, effective March 6, 1973, 38 F. R. 6379; Amendment No. 4, effective January 7, 1974, 39 F. R. 1746.]

### [§ 11,734]

#### Appendix B—Travel Group Charter Organizer's Surety Bond under Part 372a of the Special Regulations of The Civil Aeronautics Board (14 CFR Part 372a)

KNOW ALL MEN BY THESE PRESENTS, THAT WE

(Name of Travel Group Charter organizer)  
..... of .....

(City)  
..... as PRINCIPAL (hereinafter called Principal), and

(Name of Surety)  
a corporation created and existing under the laws of the State of ..... as  
(State)

SURETY (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of .....  
..... for which payment,  
(See § 372a.25 of Part 372a)

well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal intends to become a travel group charter organizer pursuant to the provisions of Part 372a of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of travel group charter participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure financial responsibility and the supplying of transportation and other services subject to Part 372a of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

WHEREAS, this bond is written to assure compliance by the Principal as an authorized travel group charter organizer with Part 372a of the Board's Special Regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom the Principal may be held legally liable for any of the damages herein described.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay or cause to be paid to charter participants any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Part 372a of the Board's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charter participant shall not exceed the total cost to such charter participant for transportation and other services in accordance with his contract with the charter organizer.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

The bond shall cover the following charters:

Surety company's bond No.	Date of flight departure	Place of flight departure

This bond is effective the ..... day of ....., 19 .., 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any

\* These data may be supplied in an addendum attached to the bond. See § 372a.25(c), *supra*.

time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D. C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements or arrangements for the supplying of transportation and other services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular travel group charter described herein give written notice of claim to the charter organizer or, if he is unavailable, to the Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of the particular travel group charter cov-

ered by this bond except for claims filed within the time provided herein.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument on the ..... day of ....., 19.....

#### PRINCIPAL SURETY

Name ..... Name ..... (SEAL)

By ..... By .....  
(Signature and Title) (Signature and Title)

Witness ..... Witness .....  
Only corporations may qualify to act as surety and they must meet the requirements set forth in § 372a.25(b) of Part 372a.

[§ 372a.App. B as amended by Amendment No. 1, effective November 1, 1972, 37 F. R. 23711.]

[¶ 11,735]

#### Appendix C—Post-Flight Accounting Report

Instructions: The charter organizer shall furnish a report in this form to each charter participant not later than 10 days following completion of the charter.

1. Name of carrier: .....
2. Name and address of charter organizer: .....
3. Reconciliation of price computations:
  - (a) minimum pro rata charter price, computed on basis of ..... participants, at \$..... per participant, plus service charge of \$..... \$.....
  - (b) maximum pro rata charter price.
  - (b-1) pro rata share of increased total charter price, if any.
  - (c) participant's tentative adjusted pro rata charter price, as computed on ..... \$.....
  - (d) (1) total payments received from charter participants subsequent to date on which tentative price computed ..... \$.....
  - (2) pro rata share of said total payments credited to each participant not in default ..... \$.....
  - (e) participant's final adjusted charter price ..... \$.....
  - (f) amount by which tentative adjusted price exceeds final adjusted price. (This is the amount of refund due each participant who paid the tentative adjusted price, and which must accompany this report.) ..... \$.....

#### Certification \*

I, the undersigned .....  
(name of charter organizer)

do certify that this report has been prepared by me or under my direction, that I have carefully examined it and that to the

\* Title 18 U. S. C., Sec. 1001, Crimes and Criminal Procedure, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than 5 years, or both,

to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

Aviation Law Reports

§ 372a. App. C ¶ 11,735



best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

By .....  
(officer of charter organizer  
if a company)

.....  
(Signature of charter organizer) [§ 372a. App. C as amended by Amendment  
No. 4, effective January 7, 1974, 39 F. R.  
1746.]

---

[Part 310—Inspection and Copying of Board Opinions, Orders,  
and Records begins on page 5391.]